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HOUSE BILL NO. 770

Offered January 13, 2016

Prefiled January 12, 2016

A *BILL to amend the Code of Virginia by adding sections numbered 15.2-2303.4 and 15.2-2303.5, relating to conditional zoning.*

Patron—Gilbert

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 15.2-2303.4 and 15.2-2303.5 as follows:

§ 15.2-2303.4. Provisions applicable to all conditional rezoning proffers.

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially-zoned property that requires a rezoning or proffer condition amendment.

"Off-site proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"On-site proffer" means a proffer addressing any impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public road facilities, public safety facilities, or public school facilities.

"Public facility improvement" means off-site public road facility improvement, public safety facility improvement, or public school facility improvement. No public facility improvement shall include any operating expense of an existing public facility such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, which does not expand the capacity of such facility.

"Public road facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Residentially zoned property" means property zoned or proposed to be zoned for either single family or multi-family housing.

B. Notwithstanding any other provision of law, general or special, no locality shall (i) request or accept any unreasonable proffer in connection with a rezoning or a proffer condition amendment, as an unreasonable proffer is defined in this section, as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application, proffer condition amendment, for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit, or remain subject to, an unreasonable proffer.

C. Notwithstanding any other provision of law, general or special, (i) as used in this Chapter, a proffer, or proffer condition amendment, whether on-site or off-site, offered voluntarily pursuant to §§ 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an impact that is specifically and uniquely attributable to a proposed new residential development or other new residential use applied for; and (ii) an off-site proffer shall be deemed unreasonable pursuant to subdivision (i) unless it addresses an impact to an off-site public facility, such that, (a) the new

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59 residential development or new residential use creates a need, or an identifiable portion of a need, for
60 one or more public facility improvements in excess of existing public facility capacity at the time of the
61 rezoning or proffer condition amendment, and (b) each such new residential development or new
62 residential use applied for receives a direct and material benefit from a proffer made with respect to
63 any such public facility improvements.

64 D. Notwithstanding any other provision of law, general or special:

65 1. Actions brought to contest the action of a locality in violation of this section shall be brought only
66 by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition
67 amendment pursuant to subsection F of § 15.2-2285.

68 2. In any action in which a locality has denied a rezoning or an amendment to an existing proffer
69 and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to
70 submit, or remain subject to an unreasonable proffer that it has proven was suggested, requested, or
71 required, formally or informally, by the locality, the court shall presume, absent clear and convincing
72 evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

73 3. In any successful action brought pursuant to this section contesting an action of a locality in
74 violation of this section, the applicant shall be entitled to an award of reasonable attorney fees and
75 costs as well as compensatory damages, and to an order remanding the matter to the governing body
76 with a direction to approve the rezoning or proffer condition amendment without the inclusion of any
77 unreasonable proffer. If the locality fails or refuses to approve the rezoning or proffer condition
78 amendment within a reasonable time not to exceed 60 days from the date of the court's order to do so,
79 the court shall enjoin the locality from interfering with the use of the property as applied for without the
80 unreasonable proffer.

81 **§ 15.2-2303.5. Certain conditional rezoning proffers prohibited.**

82 Notwithstanding any provision of subdivision A3 of § 15.2-2286 or § 36-98, no locality shall impose
83 or require, by the acceptance of a proffer or by any other means, limitations on or requirements for
84 such matters as building materials, finishes, methods of construction, or design features, on a new
85 residential development or new residential use as defined in § 15.2-2303.4 unless such new residential
86 development or new residential use is located within an historic district designated pursuant to
87 § 15.2-2306.

88 2. That this Act shall not be construed to effect any proffer related to a non-residential
89 development or use and shall be construed as supplementary to any existing provisions limiting or
90 curtailing proffers or proffer condition amendments for new residential development or new
91 residential use that are consistent with its terms, and shall be construed to supersede any existing
92 statutory provision with respect to proffers or proffer condition amendments for new residential
93 development or new residential use that are inconsistent with its terms.